



PATENT
Customer No. 22,852
Attorney Docket No. 05725.1008-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Jerome PEYRELEVADE et al.)	Group Art Unit: 3625
)	
Application No. 10/024,355)	Examiner: James H. Zurita
)	
Filed: December 21, 2001)	Confirmation No. 4653
)	
For: METHODS AND SYSTEMS)	
INVOLVING SIMULATED)	
APPLICATION OF BEAUTY)	
PRODUCTS)	

Attention: Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPEAL BRIEF UNDER BOARD RULE § 41.37

In support of the Notice of Appeal/Reinstatement of Appeal Under 37 C.F.R. § 41.31 filed March 24, 2010, and further to Board Rule 41.37, Appellants present this brief. In accordance with M.P.E.P. § 1204.01, the prior payment of the \$540.00 Appeal Brief fee previously filed on October 5, 2009, should be applied to this Appeal Brief.

This Appeal Brief is being timely filed. If any additional fees are required or if the enclosed payment is insufficient, Appellants request that the required fees be charged to Deposit Account No. 06-0916.

I. **Real Party In Interest**

The real party in interest is L'Oréal S.A., the assignee of the entire right, title, and interest in the application, as indicated by the assignment duly recorded in the U.S. Patent and Trademark Office, beginning at Reel 013141, Frame 0393, on July 30, 2002.

II. Related Appeals and Interferences

Appellants, Appellants' legal representative, and Assignee are aware of no other appeals, interferences, or judicial proceedings that may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

III. Status of Claims

Claims 1-72 are currently pending. Claims 1-72, as set forth in the Claims Appendix, were rejected in the Office Action dated January 22, 2010 ("Office Action"), and the rejections applied to those claims are at issue in this appeal.

IV. Status of Amendments

The claims have not been amended subsequent to the Office Action.

V. Summary of Claimed Subject Matter

A. Independent Claim 1

Independent claim 1 recites a method for beauty product selection.¹ The method includes accessing a facial image (page 28, paragraph [097]; FIG. 18, “1810”; FIG. 19, “1730”). The method also includes receiving a selection from a user of at least one beauty product for simulated application to the facial image (page 29, paragraph [099]; FIG. 18, “1820”). The method also includes simulating the at least one selected beauty product on the facial image (page 30, paragraph [0100]; FIG. 18, “1830”; FIG. 19, “1910”). Further, the method includes determining a recommended beauty product based at least in part on the at least one selected product (page 30, paragraph [0101]; FIG. 18, “1840”; FIG. 19, “RECOMMENDED PRODUCT A”). The method also includes simulating the at least one recommended beauty product on the facial image (page 31, paragraph [0102]; FIG. 18, “1850”; FIG. 19, “1920”).

B. Independent Claim 22

Independent claim 22 recites a method for simulating beauty product application. The method includes displaying for a user a facial image on a display (page 29, paragraph [098]; FIG. 19, “1730”). The method also includes receiving from the user a selection of at least one beauty product (page 29, paragraph [099]; FIG. 18, “1820”). The method also includes identifying a recommended beauty product complementary to the at least one selected product (page 30, paragraph [0101]; FIG. 18, “1840”; FIG. 19,

¹ In referring to the specification and drawings, Appellants do not intend to limit the scope of the claims to the exemplary embodiments described in the specification and shown in the drawings. Rather, Appellants expressly affirm their entitlement to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law. Moreover, the references to the specification and drawings are exemplary and non-exhaustive.

"RECOMMENDED PRODUCT A"). Further, the method includes notifying the user of the complementary beauty product (page 23, paragraph [079]; FIG. 1B, "160"). The method also includes providing the user with an option to trigger a simulation of a beauty product application of at least one of the selected beauty product and the complementary beauty product (page 32, paragraph [0104]; FIG. 17, "APPLY MAKE-UP NOW"). The method also includes simulating the beauty product application on the facial image in response to the user's trigger (page 31, paragraph [0102], page 32, paragraph [0104]; FIG. 18, "1850"; FIG. 19, "1920").

C. Independent Claim 36

Independent claim 36 recites a beauty product selection system (400). The system includes a display (FIG. 5, "532") for displaying a facial image (FIG. 19, "1730") (page 29, paragraph [098]). The system also includes means for receiving a selection by a user of at least one beauty product for simulated application to the facial image. This is a means-plus-function recitation and the corresponding structure, material, or acts is/are disclosed at FIG. 5, "520," and/or any of "522," "524," and "526"; page 29, paragraph [099]; FIG. 18, "1820." Further, the system includes an identifier (FIG. 5, "540") that recommends a beauty product based on the at least one selected product (page 30, paragraph [0101]; FIG. 18, "1840"; FIG. 19, "RECOMMENDED PRODUCT A"). The system also includes a simulator (FIG. 4, "450") that causes on the facial image a visual simulation of the at least one selected beauty product and the at least one recommended beauty product (page 31, paragraph [0102], page 32, paragraph [0105]; FIG. 18, "1850"; FIG. 19, "1920").

D. Independent Claim 55

Independent claim 55 recites a system (400) for simulating beauty product application. The system includes an image generator (FIG. 4, “450”; FIG. 5, “532”) for causing display of a facial image (page 29, paragraph [098]; FIG. 19, “1730”). The system also includes means for receiving from a user a selection of at least one beauty product. This is a means-plus-function recitation and the corresponding structure, material, or acts is/are disclosed at FIG. 5, “520,” and/or any of “522,” “524,” and “526”; page 29, paragraph [099]; FIG. 18, “1820.” The system also includes an identifier (FIG. 5, “540”) for identifying a recommended beauty product complementary to the at least one selected product (page 30, paragraph [0101]; FIG. 18, “1840”; FIG. 19, “RECOMMENDED PRODUCT A”). The system also includes a notifier (FIG. 5, “530” and “532”; FIG. 4, “450”) for notifying the user of the complementary beauty product (page 23, paragraph [079]; FIG. 1B, “160”). Further, the system includes an interface (FIG. 5, “530” and “532”) providing the user with the option to trigger a simulated application on the facial image of at least one of the selected beauty product and the complementary beauty product (page 32, paragraph [0104]; FIG. 17, “APPLY MAKE-UP NOW”). The system also includes a simulator (FIG. 5, “540”) for causing beauty product application to be simulated on the facial image in response to the user’s trigger (page 31, paragraph [0102]; page 32, paragraph [0104]; FIG. 18, “1850”; FIG. 19, “1920”).

E. Independent Claim 68

Independent claim 68 recites a beauty product selection method. The method includes receiving personal information from a user (page 36, paragraphs [0117]-[0118];

FIG. 22, "U.160"). The method also includes receiving from a user a selection of at least one beauty product (page 29, paragraph [099]; FIG. 18, "1820"). The method also includes simulating the at least one selected beauty product on a facial image (page 30, paragraph [0100]; FIG. 18, "1830"; FIG. 19, "1910"). Further, the method also includes determining a recommended beauty product based on the at least one selected product and the personal information (page 30, paragraph [0101]; FIG. 18, "1840"; FIG. 19, "RECOMMENDED PRODUCT A"). The method also includes simulating the at least one recommended beauty product on the facial image (page 31, paragraph [0102]; FIG. 18, "1850"; FIG. 19, "1920").

F. Independent Claim 72

Independent claim 72 recites a beauty product selection method. The method includes accessing a facial image (page 28, paragraph [097]; FIG. 18, "1810"; FIG. 19, "1730"). The method also includes receiving subject-specific information (page 35, paragraph [0115]; FIG. 21A, "S.120"). The method also includes using the subject-specific information to identify at least one beauty product for simulated application to the facial image (page 35, paragraph [0115]; FIG. 21A, "S.130"). The method also includes simulating the at least one identified beauty product on the facial image (page 30, paragraph [0100]; FIG. 18, "1830"; FIG. 19, "1910"). Further, the method also includes determining a recommended beauty product based at least in part on the at least one identified product (page 30, paragraph [0101]; FIG. 18, "1840"; FIG. 19, "RECOMMENDED PRODUCT A"). The method also includes simulating the at least one recommended beauty product on the facial image (page 31, paragraph [0102]; FIG. 18, "1850"; FIG. 19, "1920").

VI. Grounds of Rejection

The following grounds of rejection are to be reviewed:

A. Claims 1-22, 25-55, and 58-72 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,801,216 to Voticky et al. ("Voticky") in view of U.S. Patent No. 6,937,755 to Orpaz et al. ("Orpaz").

B. Claims 23, 24, 56, and 57 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Voticky, Orpaz, and allegedly-admitted prior art ("AAPA").

VII. Argument

A. The Rejection of Claims 1-22, 25-55, and 58-72 Under 35 U.S.C. § 103(a) over Voticky and Orpaz Should Be Reversed

The rejection of claims 1-22, 25-55, and 58-72 under 35 U.S.C. § 103(a) should be reversed because a case for *prima facie* obviousness has not been established.

“The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. . . . [R]ejections on obviousness cannot be sustained with mere conclusory statements.” M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007) (internal citation and inner quotation omitted). “The mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art.” M.P.E.P. § 2143.01(III) (emphasis in original). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. § 2143.03. “In determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” M.P.E.P. § 2141.02(I) (emphases in original).

“[T]he framework for objective analysis for determining obviousness under 35 U.S.C. § 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q. 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art.” M.P.E.P. § 2141(II). “Office personnel must explain why the difference(s)

between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III).

1. Independent Claim 1

Independent claim 1 recites a combination including, for example, “determining a recommended beauty product based at least in part on [at least one product selected by a user for simulated application to a facial image]” and “simulating the at least one recommended beauty product on the facial image.” Voticky and Orpaz, taken alone or in combination, fail to teach or suggest at least the recited combination.

The Examiner alleges that “Voticky discloses . . . determining a recommended beauty product based at least in part on the at least one selected product. See, for example, at least Col. 11, ll. 26-53, concerning product suggestions and recommendations.” Office Action at 3. Appellants disagree.

Voticky discloses that the makeover system of Voticky determines product recommendations based on the client’s profile (e.g., hair color), and not based on a beauty product selected by a user. Voticky, col. 11, ll. 46-50. Therefore, Voticky fails to teach or suggest “determining a recommended beauty product based at least in part on [at least one product selected by a user for simulated application to a facial image],” as recited in independent claim 1.

In addition, as correctly observed by the Examiner, “Voticky does not specifically disclose simulating the at least one recommended beauty product on the facial image,” as recited in independent claim 1. Office Action at 3.

The Examiner attempts to cure the deficiencies of Voticky by relying on Orpaz. Id. The Examiner alleges that Orpaz discloses “simulating the at least one recommended beauty product on the facial image.” Id. Appellants disagree.

Although Orpaz discloses suggesting various products, the suggestions are based on **previous consumer behaviors** or are “made at the request of a third party (e.g., a manufacturer of the products) **without direct input from the consumer.**” Orpaz, col. 10, l. 63 - col. 11, l. 11 (emphasis added). Suggesting based on previous consumer behavior or suggesting without direct input from the consumer is not the same as determining a recommended beauty product based on a product selected by a user for simulated application to a facial image. Therefore, Orpaz fails to teach or suggest “determining a recommended beauty product based at least in part on [at least one product selected by a user for simulated application to a facial image],” as recited in independent claim 1.

Because Orpaz fails to teach or suggest “determining a recommended beauty product based at least in part on [at least one product selected by a user for simulated application to a facial image],” Orpaz also fails to teach or suggest “simulating the at least one recommended beauty product [determined based at least in part on at least one product selected by a user] on [a] facial image,” as recited in independent claim 1. In other words, the simulated product of Orpaz is not a recommended product that is determined based at least in part on at least one product selected by a user for simulated application to a facial image.

In view of the above-noted deficiencies of the Voticky and Orpaz references, the Office Action has neither properly determined the scope and content of the prior art nor

properly ascertained the differences between the prior art and the invention of independent claim 1. Also, in view of those deficiencies, no combination of the applied references can possibly yield the invention of claim 1, nor could the invention of claim 1 have been predictable from the applied references. Further in view of those deficiencies, there would have been no legitimate reason for one of ordinary skill in the art to modify the teachings of the references to achieve the claimed combinations. Therefore, the Office Action has failed to clearly articulate a legitimate reason why claim 1 would have been purportedly obvious to one of ordinary skill in the art in view of the prior art. Accordingly, a *prima facie* case of obviousness has not been established with respect to independent claim 1, and the § 103(a) rejection of independent claim 1 is thus improper and should be reversed.

2. Independent Claim 22

Independent claim 22 is rejected on the same grounds as independent claim 1 with no additional explanation provided. Office Action at 7. Therefore, the § 103 rejection of independent claim 22 should be reversed at least for reasons similar to the reasons set forth above with respect to independent claim 1.

In addition, independent claim 22 recites, among other features, “identifying a recommended beauty product complementary to the at least one [product selected by a user]” and “providing the user with an option to trigger a simulation of a beauty product application of at least one of the selected beauty product and the complementary beauty product.” Voticky and Orpaz, taken alone or in combination, fail to teach or suggest at least the recited features, and the Office Action fails to even allege that the recited features are taught or suggested by Voticky and/or Orpaz. Office Action at 7.

In view of the above-noted deficiencies of the Voticky and Orpaz references and the Office Action's complete failure to clearly articulate reasons why the invention of claim 22 purportedly would have been obvious over the cited references, as required by *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007), a *prima facie* case of obviousness has not been established with respect to independent claim 22. Accordingly, the § 103(a) rejection of independent claim 22 is thus improper and should be reversed.

3. Independent Claim 36

Independent claim 36 is rejected on the same grounds as independent claim 1 with no additional explanation provided. Office Action at 8. Therefore, the § 103 rejection of independent claim 36 should be reversed at least for reasons similar to the reasons set forth above with respect to independent claim 1.

In addition, independent claim 36 recites, among other features, "a simulator that causes on the facial image a visual simulation of the at least one selected beauty product and the at least one recommended beauty product." Although the Office Action does not specifically allege that the recited feature is taught or suggested by Voticky and/or Orpaz, the Office Action, with respect to claim 3, asserts that "Voticky discloses that the recommended product is simulated on the facial image while the simulation of the at least one selected product appears on the facial image. See, for example, at least Col. 11, lines 26-37." Office Action at 4. The Office Action's position is, however, internally inconsistent because the Office Action with respect to claim 1 even admits that "Voticky does not specifically disclose simulating the at least one recommended beauty product on the facial image." Office Action at 3.

The product recommendations of Voticky are presented merely as a textual listing (see the three broken lines under “PRODUCT RECOMMENDATION” in FIG. 12) rather than being simulated on a facial image, and therefore, as admitted by the Office Action with respect to claim 1, Voticky does not teach or suggest simulating at least one recommended beauty product on a facial image.

Accordingly, Voticky does not also teach or suggest “a simulator that causes on the facial image a visual simulation of the at least one selected beauty product and the at least one recommended beauty product,” as recited in independent claim 36. Orpaz does not cure the deficiency of Voticky, and the Office Action does not allege otherwise.

For these additional reasons, the Office Action has failed to clearly articulate a legitimate reason why claim 36 would have been purportedly obvious to one of ordinary skill in the art in view of the prior art. Accordingly, a *prima facie* case of obviousness has not been established with respect to independent claim 36, and the § 103(a) rejection of independent claim 36 is thus improper and should be reversed.

4. Independent Claim 55

Independent claim 55 is rejected on the same grounds as independent claim 1 with no additional explanation provided. Office Action at 9. Therefore, the § 103 rejection of independent claim 55 should be reversed at least for reasons similar to the reasons set forth above with respect to independent claim 1.

In addition, independent claim 55 recites, among other features, “an identifier for identifying a recommended beauty product complementary to the at least one [product selected by a user]” and “an interface providing the user with the option to trigger a simulated application on the facial image of at least one of the selected beauty product

and the complementary beauty product.” Voticky and Orpaz, taken alone or in combination, fail to teach or suggest at least the recited features, and the Office Action fails to even allege that the recited features are taught or suggested by Voticky and/or Orpaz. Office Action at 9.

In view of the above-noted deficiencies of the Voticky and Orpaz references and the Office Action’s complete failure to clearly articulate reasons why the invention of claim 55 purportedly would have been obvious over the cited references, as required by *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007), a *prima facie* case of obviousness has not been established with respect to independent claim 55. Accordingly, the § 103(a) rejection of independent claim 55 is thus improper and should be reversed.

5. Independent Claim 68

Independent claim 68 is rejected on the same grounds as independent claim 1 with no additional explanation provided. Office Action at 10. Therefore, the § 103 rejection of independent claim 68 should be reversed at least for reasons similar to the reasons set forth above with respect to independent claim 1.

In addition, independent claim 68 recites, among other features, “determining a recommended beauty product based on the at least one selected product and the personal information.” Although the Office Action does not specifically allege that the recited feature is taught or suggested by Voticky and/or Orpaz, the Office Action, with respect to claim 15, asserts that “Voticky discloses eliciting personal information from the user, wherein the recommendation is a function of both at least one selected

product and the personal information. (see at least references to a user's face, as in Col. 7, lines 21-30)." Office Action at 6.

As explained above with respect to claim 1, Voticky discloses that the makeover system of Voticky determines product recommendations based on the client's profile (e.g., hair color), and not based on a beauty product selected by a user. Voticky, col. 11, ll. 46-50. Therefore, Voticky does not teach or suggest that the recommendation is a function of **both** at least one selected product **and** personal information, and thus Voticky fails to teach or suggest "determining a recommended beauty product based on the at least one selected product **and** the personal information," as recited in independent claim 68. (Emphasis added.) Orpaz does not cure the deficiency of Voticky, and the Office Action does not allege otherwise.

For these additional reasons, the Office Action has failed to clearly articulate a legitimate reason why claim 68 would have been purportedly obvious to one of ordinary skill in the art in view of the prior art. Accordingly, a *prima facie* case of obviousness has not been established with respect to independent claim 68, and the § 103(a) rejection of independent claim 68 is thus improper and should be reversed.

6. Independent Claim 72

Independent claim 72 is rejected on the same grounds as independent claim 1 with no additional explanation provided. Office Action at 10. Therefore, the § 103 rejection of independent claim 72 should be reversed at least for reasons similar to the reasons set forth above with respect to independent claim 1.

7. Dependent Claims 2-21

Dependent claims 2-21 depend from independent claim 1. Claims 2-21 are allowable at least by virtue of their dependence from an allowable independent claim and for reasons similar to the reasons set forth above with respect to independent claim 1. Accordingly, the § 103 rejection of dependent claims 2-21 should be reversed.

In addition, the dependent claims recite further distinctions over the cited references.

i. Dependent Claim 3

Dependent claim 3 recites, among other things, that “the recommended beauty product is simulated on the facial image while the simulation of the at least one selected product appears on the facial image.”

The Office Action asserts that “Voticky discloses that the recommended product is simulated on the facial image while the simulation of the at least one selected product appears on the facial image. See, for example, at least Col. 11, lines 26-37.” Office Action at 4. The Office Action’s assertion is, however, internally inconsistent because the Office Action with respect to claim 1 admits that “Voticky does not . . . disclose simulating the at least one recommended beauty product on the facial image.” Office Action at 3.

The product recommendations of Voticky are presented merely as a textual listing (see the three broken lines under “PRODUCT RECOMMENDATION” in FIG. 12) rather than being simulated on a facial image, and therefore, as admitted by the Office Action with respect to claim 1, Voticky does not teach or suggest simulating the at least one recommended beauty product on the facial image.

Accordingly, Voticky also fails to teach or suggest that “the recommended beauty product is simulated on the facial image while the simulation of the at least one selected product appears on the facial image,” as recited in claim 3. Orpaz does not cure the deficiency of Voticky, and the Office Action does not allege otherwise.

For these additional reasons, a *prima facie* case of obviousness has not been established with respect to claim 3, and the § 103(a) rejection of claim 3 is thus improper and should be reversed.

ii. Dependent Claim 7

Dependent claim 7 recites, among other things, “receiving from the user an affirmative request seeking a recommendation, and wherein the simulation of the recommended product appears on the facial image after the user affirmatively seeks a recommendation.”

The Office Action asserts that “Voticky discloses receiving from the user an affirmative request seeking a recommendation, and wherein the simulation of the recommended product appears on the facial image after the user affirmatively seeks a recommendation. See, for example, at least Col. 11, lines 26-37.” Office Action at 4. The Office Action’s assertion is, however, internally inconsistent because the Office Action with respect to claim 1 admits that “Voticky does not . . . disclose simulating the at least one recommended beauty product on the facial image.” Office Action at 3.

Voticky requires product recommendations to be listed separately from the finished “after picture.” See Voticky at FIG. 12 (PRODUCT RECOMMENDATION). Such a listing does not require a user to provide an affirmative request seeking a recommendation. Further, the “PRODUCT RECOMMENDATION” appears to be

merely a textual listing (see the three broken lines under “PRODUCT RECOMMENDATION” in FIG. 12) rather than providing any “simulation.” Thus, the teachings of Voticky are contrary to “the simulation of the recommended product appear[ing] on the facial image after the user affirmatively seeks a recommendation,” as recited in claim 7.

Even assuming, *arguendo*, that “the simulation of the recommended product appears on the facial image,” which Appellants strongly dispute as explained above, the simulation DOES NOT appear on the facial image AFTER the user affirmatively seeks a recommendation. Voticky discloses that after a user selects an exit button, the system formulates an after picture, and displays the after picture and the PRODUCT RECOMMENDATION list. Voticky, col. 11, ll. 26-37. Appellants submit that merely selecting an exit button is not an affirmative request seeking a recommendation.

Orpaz does not cure the deficiencies of Voticky, and the Office Action does not allege otherwise.

For these additional reasons, a *prima facie* case of obviousness has not been established with respect to claim 7, and the § 103(a) rejection of claim 7 is thus improper and should be reversed.

iii. Dependent Claim 10

Dependent claim 10 recites, among other things, that “simulating a recommended beauty product includes sequentially simulating alternative recommendations.”

The Office Action asserts that “Voticky discloses sequentially simulating alternative recommendations. See, for example, at least Col. 9, lines 16-29.” Office

Action at 5. The Office Action's assertion is, however, internally inconsistent because, as mentioned above, the Office Action with respect to claim 1 admits that "Voticky does not . . . disclose simulating the at least one recommended beauty product on the facial image." Office Action at 3.

The product recommendations of Voticky are presented merely as a textual listing (see the three broken lines under "PRODUCT RECOMMENDATION" in FIG. 12) rather than as simulated on an image, and therefore, as admitted by the Office Action with respect to claim 1, Voticky does not teach or suggest simulating the at least one recommended beauty product on the facial image.

Therefore, Voticky does not also teach or suggest that "simulating a recommended beauty product includes sequentially simulating alternative recommendations," as recited in claim 10. Orpaz does not cure the deficiency of Voticky, and the Office Action does not allege otherwise.

For these additional reasons, a *prima facie* case of obviousness has not been established with respect to claim 10, and the § 103(a) rejection of claim 10 is thus improper and should be reversed.

iv. Dependent Claim 11

Dependent Claim 11 depends from dependent claim 10, and incorporates the additional features recited in dependent claim 10. Therefore, the § 103 rejection of dependent claim 11 should be reversed at least for additional reasons similar to the additional reasons set forth above with respect to dependent claim 10.

In addition, dependent claim 11 recites, among other things, "causing the facial image to be displayed to the user, wherein a first alternative simulated recommendation

is displayed simultaneously on the facial image with a display of the at least one selected product, and wherein thereafter a second alternative simulated recommendation is displayed simultaneously on the facial image with a display of the at least one selected product.”

The Office Action correctly observes that Voticky does not disclose the recited feature. Office Action at 5. The Office Action, however, attempts to cure the deficiency by relying on Orpaz. “This feature is disclosed by Orpaz, Fig. 4 and related text, as in Col. 4, lines 37-50.” Office Action at 5. Appellants disagree.

The cited sections of Orpaz merely disclose retrieving a saved image for a user to manipulate. “Referring to FIG. 4, the system 10 includes a retrieval interface 72 for retrieving saved ‘looks.’” Orpaz, col. 4, ll. 37-38. “When a look is chosen from the retrieval interface 72, the system changes to the image simulation interface 33 and displays the chosen look, whereby the user can manipulate the look as previously described.” Orpaz, col. 4, ll. 46-50.

Retrieving a saved image for manipulation does not teach or suggest that “a first alternative simulated recommendation is displayed simultaneously on the facial image with a display of the at least one selected product,” as recited in claim 11. Retrieving a saved image for manipulation also does not teach or suggest that “thereafter a second alternative simulated recommendation is displayed simultaneously on the facial image with a display of the at least one selected product,” as further recited in claim 11. Nothing in Orpaz teaches or suggests the recited features of claim 11.

In view of the above-noted deficiencies of the Voticky and Orpaz references, the Office Action has neither properly determined the scope and content of the prior art nor

properly ascertained the differences between the prior art and the invention of claim 11. Also, in view of those deficiencies, no combination of the applied references can possibly yield the invention of claim 1, nor could the invention of claim 11 have been predictable from the applied references. Further in view of those deficiencies, there would have been no legitimate reason for one of ordinary skill in the art to modify the teachings of the references to achieve the claimed combinations. Therefore, the Office Action has failed to clearly articulate a legitimate reason why claim 11 would have been purportedly obvious to one of ordinary skill in the art in view of the prior art.

For these additional reasons, a *prima facie* case of obviousness has not been established with respect to claim 11, and the § 103(a) rejection of claim 11 is thus improper and should be reversed.

v. *Dependent Claim 12*

Dependent Claim 12 depends from dependent claim 10, and incorporates the additional features recited in dependent claim 10. Therefore, the § 103 rejection of dependent claim 12 should be reversed at least for additional reasons similar to the additional reasons set forth above with respect to dependent claim 10.

In addition, dependent claim 12 is rejected on the same grounds as dependent claim 11 with no additional explanation provided. Office Action at 6. Therefore, the § 103 rejection of dependent claim 12 should be reversed at least for additional reasons similar to the reasons set forth above with respect to claim 11.

Moreover, dependent claim 12 recites, among other features, “providing the user with a toggle switch to toggle between displays of the first and second simulated recommendations.” Voticky and Orpaz, taken alone or in combination, fail to teach or

suggest at least the recited feature, and the Office Action fails to even allege that the recited feature is taught or suggested by Voticky and/or Orpaz. Office Action at 6.

In view of the above-noted deficiencies of the Voticky and Orpaz references and the Office Action's complete failure to clearly articulate reasons why the invention of claim 12 purportedly would have been obvious over the cited references, as required by *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007), a *prima facie* case of obviousness has not been established with respect to claim 12. Accordingly, the § 103(a) rejection of claim 12 is thus improper and should be reversed.

vi. Dependent Claims 15 and 16

Dependent claim 15 recites, among other things, "eliciting personal information from the user, wherein the recommendation is a function of both the at least one selected product and the personal information."

The Office Action asserts that "Voticky discloses eliciting personal information from the user, wherein the recommendation is a function of both at least one selected product and the personal information. (see at least references to a user's face, as in Col. 7, lines 21-30)." Office Action at 6.

As explained above with respect to claim 1, Voticky discloses that the makeover system of Voticky determines product recommendations based on the client's profile (e.g., hair color), and not based on a beauty product selected by a user. Voticky, col. 11, ll. 46-50. Therefore, Voticky does not teach or suggest that "the recommendation is a function of **both** the at least one selected product **and** the personal information," as recited in dependent claim 15. (Emphasis added.)

For these additional reasons, a *prima facie* case of obviousness has not been established with respect to dependent claim 15, and the § 103(a) rejection of dependent claim 15 is thus improper and should be reversed.

Dependent claim 16 depends from dependent claim 15, and incorporates the additional features recited in dependent claim 15. Therefore, the § 103 rejection of dependent claim 16 should be reversed at least for additional reasons similar to the additional reasons set forth above with respect to dependent claim 15.

vii. Dependent Claims 18 and 19

Dependent claims 18 and 19 are rejected on the same grounds as dependent claim 11 with no additional explanation provided. Office Action at 7. Therefore, the § 103 rejection of dependent claims 18 and 19 should be reversed at least for additional reasons similar to the reasons set forth above with respect to claim 11.

8. Dependent Claims 25-35

Dependent claims 25-35 depend from independent claim 22. Claims 25-35 are allowable at least by virtue of their dependence from an allowable independent claim and for reasons similar to the reasons set forth above with respect to independent claim 22. Accordingly, the § 103 rejection of dependent claims 25-35 should be reversed.

In addition, the dependent claims recite further distinctions over the cited references.

i. Dependent Claim 26

Dependent claim 26 is rejected on the same grounds as dependent claim 11 with no additional explanation provided. Office Action at 7. Therefore, the § 103 rejection of

dependent claim 26 should be reversed at least for additional reasons similar to the reasons set forth above with respect to claim 11.

In addition, dependent claim 26 recites, among other things, that “the simulation of the selected beauty product and the complementary beauty product occurs simultaneously on the facial image.” Voticky and Orpaz, taken alone or in combination, fail to teach or suggest at least the recited feature, and the Office Action fails to even allege that the recited feature is taught or suggested by Voticky and/or Orpaz. Office Action at 7.

In view of the above-noted deficiencies of the Voticky and Orpaz references and the Office Action’s complete failure to clearly articulate reasons why the invention of claim 26 purportedly would have been obvious over the cited references, as required by *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007), a *prima facie* case of obviousness has not been established with respect to claim 26. Accordingly, the § 103(a) rejection of claim 26 is thus improper and should be reversed.

ii. Dependent Claim 27

Dependent claim 27 is rejected on the same grounds as dependent claim 10 with no additional explanation provided. Office Action at 7. Therefore, the § 103 rejection of dependent claim 27 should be reversed at least for additional reasons similar to the additional reasons set forth above with respect to claim 10.

In addition, dependent claim 27 recites, among other things, that “the simulation of the selected beauty product and the complementary beauty product occurs sequentially.” Voticky and Orpaz, taken alone or in combination, fail to teach or suggest

at least the recited feature, and the Office Action fails to even allege that the recited feature is taught or suggested by Voticky and/or Orpaz. Office Action at 7.

In view of the above-noted deficiencies of the Voticky and Orpaz references and the Office Action's complete failure to clearly articulate reasons why the invention of claim 27 purportedly would have been obvious over the cited references, as required by *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007), a *prima facie* case of obviousness has not been established with respect to claim 27. Accordingly, the § 103(a) rejection of claim 27 is thus improper and should be reversed.

iii. Dependent Claim 34

Dependent claim 34 is rejected on the same grounds as independent claim 22 with no additional explanation provided. Office Action at 8. Therefore, the § 103 rejection of dependent claim 27 should be reversed at least for reasons similar to the reasons set forth above with respect to independent claim 22.

In addition, dependent claim 34 recites, among other things, "providing the user with an option to trigger a simulation of the alternative complementary product." Voticky and Orpaz, taken alone or in combination, fail to teach or suggest at least the recited feature, and the Office Action fails to even allege that the recited feature is taught or suggested by Voticky and/or Orpaz. Office Action at 8.

In view of the above-noted deficiencies of the Voticky and Orpaz references and the Office Action's complete failure to clearly articulate reasons why the invention of claim 34 purportedly would have been obvious over the cited references, as required by *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007), a *prima facie* case of

obviousness has not been established with respect to claim 34. Accordingly, the § 103(a) rejection of claim 34 is thus improper and should be reversed.

9. Dependent Claims 37-54

Dependent claims 37-54 depend from independent claim 36. Claims 37-54 are allowable at least by virtue of their dependence from an allowable independent claim and for reasons similar to the reasons set forth above with respect to independent claim 36. Accordingly, the § 103 rejection of dependent claims 37-54 should be reversed.

In addition, the dependent claims are allowable for the following additional reasons.

i. Dependent Claim 37

Dependent claim 37 is rejected on the same grounds as dependent claim 3 with no additional explanation provided. Office Action at 8. Therefore, the § 103 rejection of dependent claim 37 should be reversed at least for additional reasons similar to the additional reasons set forth above with respect to dependent claim 3.

ii. Dependent Claim 41

Dependent claim 41 is rejected on the same grounds as dependent claim 7 with no additional explanation provided. Office Action at 9. Therefore, the § 103 rejection of dependent claim 41 should be reversed at least for additional reasons similar to the additional reasons set forth above with respect to dependent claim 7.

iii. Dependent Claim 44

Dependent claim 44 is rejected on the same grounds as dependent claim 10 with no additional explanation provided. Office Action at 9. Therefore, the § 103 rejection of

dependent claim 44 should be reversed at least for additional reasons similar to the additional reasons set forth above with respect to dependent claim 10.

iv. Dependent Claim 45

Dependent claim 45 is rejected on the same grounds as dependent claim 11 with no additional explanation provided. Office Action at 9. Therefore, the § 103 rejection of dependent claim 45 should be reversed at least for additional reasons similar to the additional reasons set forth above with respect to dependent claim 11.

v. Dependent Claim 46

Dependent claim 46 is rejected on the same grounds as dependent claim 12 with no additional explanation provided. Office Action at 9. Therefore, the § 103 rejection of dependent claim 46 should be reversed at least for additional reasons similar to the additional reasons set forth above with respect to dependent claim 12.

vi. Dependent Claim 49

Dependent claim 49 is rejected on the same grounds as dependent claim 15 with no additional explanation provided. Office Action at 9. Therefore, the § 103 rejection of dependent claim 49 should be reversed at least for additional reasons similar to the additional reasons set forth above with respect to dependent claim 15.

vii. Dependent Claims 52-54

Dependent claim 52 recites, among other things, that “the display presents two facial images, and wherein different recommended products are displayed on each image.” The Office Action asserts that “Voticky discloses that the display presents two facial images, and wherein differing recommended products are displayed on each image. See at least Col. 8, lines 4-23.” Office Action at 9. The Office Action’s assertion

is, however, internally inconsistent because, as mentioned above, the Office Action with respect to claim 1 admits that “Voticky does not . . . disclose simulating the at least one recommended beauty product on the facial image.” Office Action at 3.

The product recommendations of Voticky are presented merely as a textual listing (see the three broken lines under “PRODUCT RECOMMENDATION” in FIG. 12) rather than being simulated on a facial image, and therefore, as admitted by the Office Action with respect to claim 1, Voticky does not teach or suggest displaying recommended products on facial images.

Therefore, Voticky does not also teach or suggest that “the display presents two facial images, and wherein different recommended products are displayed on each image,” as recited in claim 52.

Orpaz does not cure the deficiency of Voticky, and the Office Action does not allege otherwise.

For these additional reasons, a *prima facie* case of obviousness has not been established with respect to claim 52, and the § 103(a) rejection of claim 52 is thus improper and should be reversed.

Dependent claims 53 and 54 depend from dependent claim 52, and incorporate the additional features recited in dependent claim 52. Therefore, the § 103 rejection of dependent claims 53 and 54 should be reversed at least for additional reasons similar to the additional reasons set forth above with respect to dependent claim 52.

10. Dependent Claims 58-67

Dependent claims 58-67 depend from independent claim 55. Claims 58-67 are allowable at least by virtue of their dependence from an allowable independent claim

and for reasons similar to the reasons set forth above with respect to independent claim 55. Accordingly, the § 103 rejection of dependent claims 58-67 should be reversed.

In addition, the dependent claims are allowable for the following additional reasons.

i. Dependent Claim 59

Dependent claim 59 is rejected on the same grounds as dependent claim 11 with no additional explanation provided. Office Action at 10. Therefore, the § 103 rejection of dependent claim 59 should be reversed at least for additional reasons similar to the additional reasons set forth above with respect to dependent claim 11.

ii. Dependent Claim 60

Dependent claim 60 is rejected on the same grounds as dependent claim 27 with no additional explanation provided. Office Action at 10. Therefore, the § 103 rejection of dependent claim 60 should be reversed at least for additional reasons similar to the additional reasons set forth above with respect to dependent claim 27.

11. Dependent Claims 69-71

Dependent claims 69-71 depend from independent claim 68. Claims 69-71 are allowable at least by virtue of their dependence from an allowable independent claim and for reasons similar to the reasons set forth above with respect to independent claim 68. Accordingly, the § 103 rejection of dependent claims 69-71 should be reversed.

B. The Rejection of Claims 23, 24, 56, and 57 Under 35 U.S.C. § 103(a) over Voticky, Orpaz, and AAPA Should Be Reversed

Appellants respectfully traverse the rejection of claims 23, 24, 56, and 57 under 35 U.S.C. § 103(a) as being unpatentable over Voticky, Orpaz, and AAPA, because Voticky, Orpaz, and AAPA fail to teach or suggest all of the elements of claims 23, 24, 56, and 57.

Claims 23 and 24 depend from independent claim 22, and claims 56 and 57 depend from independent claim 55. As explained previously, Voticky and Orpaz fail to teach or suggest at least “identifying a recommended beauty product complementary to the at least one [product selected by a user]” and “providing the user with an option to trigger a simulation of a beauty product application of at least one of the selected beauty product and the complementary beauty product,” as recited in claim 22, and “an identifier for identifying a recommended beauty product complementary to the at least one [product selected by a user]” and “an interface providing the user with the option to trigger a simulated application on the facial image of at least one of the selected beauty product and the complementary beauty product,” as recited in claim 55. AAPA fails to cure the deficiencies of Voticky and Orpaz.

The Examiner alleges that “[a]s admitted prior art, it was old and well known . . . to analyze historical data to provide guidance concerning consumer preferences.” Office Action at 11. Appellants respectfully disagree with the Examiner’s allegation. The Examiner fails to provide any explanation of why he deems such subject matter to be “admitted prior art” or “old and well known.” For example, the Examiner fails to cite any portion of the specification such as the “Description of Related Art” section of the

specification. Furthermore, even if there were to be such “admitted prior art,” which there is not, nothing provides any teaching of artificial intelligence. Indeed, the Examiner even admits that Voticky and Orpaz do not disclose the use of artificial intelligence. Id. Thus, the Office Action fails to set forth a *prima facie* case of obviousness with respect to claims 23, 24, 56, and 57, which recite an “artificial intelligence engine.”

Moreover, AAPA fails to teach or suggest the above recited features of claims 22 and 55, as required by claims 23-24 and 56-57, respectively. Therefore, the § 103(a) rejection of claims 23, 24, 56, and 57 is improper and should be reversed.

C. Conclusion


For the reasons given above, claims 1-72 are patentable over the cited references. The Board is therefore respectfully requested to reverse the outstanding rejections under 35 U.S.C. § 103(a) so that those pending claims may be allowed.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are any fees due which are not enclosed herewith, please charge such fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 24, 2010

By: 
Anthony Gutowski
Reg. No. 38,742
Finnegan, Henderson, Farabow,
Garrett & Dunner, L.L.P.
Customer No. 22,852

VIII. Claims Appendix

1. A beauty product selection method, comprising:
accessing a facial image;
receiving from the user a selection of at least one beauty product for simulated application to the facial image;
simulating the at least one selected beauty product on the facial image;
determining a recommended beauty product based at least in part on the at least one selected product; and
simulating the at least one recommended beauty product on the facial image.
2. The method of claim 1, further including causing the facial image to be displayed to the user.
3. The method of claim 1, wherein the recommended beauty product is simulated on the facial image while the simulation of the at least one selected product appears on the facial image.
4. The method of claim 2, wherein causing the facial image to be displayed includes providing software that facilitates display of the facial image.
5. The method of claim 1, wherein the facial image is an image of the user's face.

6. The method of claim 2, wherein causing the facial image to be displayed includes processing an initial facial image in a manner to thereafter permit simulated application of a beauty product to a selected portion of the facial image.

7. The method of claim 1, further comprising receiving from the user an affirmative request seeking a recommendation, and wherein the simulation of the recommended product appears on the facial image after the user affirmatively seeks a recommendation.

8. The method of claim 7, wherein the request identifies at least one of a brand, price, store, and product characteristic.

9. The method of claim 7, further comprising displaying a button activatable to cause a recommendation to be displayed.

10. The method of claim 1, wherein simulating a recommended beauty product includes sequentially simulating alternative recommendations.

11. The method of claim 10, further comprising causing the facial image to be displayed to the user, wherein a first alternative simulated recommendation is displayed simultaneously on the facial image with a display of the at least one selected product, and wherein thereafter a second alternative simulated recommendation is displayed simultaneously on the facial image with a display of the at least one selected product.

12. The method of claim 10, further comprising providing the user with a toggle switch to toggle between displays of the first and second simulated recommendations.

13. The method of claim 1, wherein the recommended product is complementary to the selected product, wherein the method further comprises maintaining a data structure identifying products, and wherein determining a recommended beauty product is accomplished by accessing the data structure.

14. The method of claim 13, wherein the data structure is populated with information derived from at least one of advice of beauty experts, user preference data, user purchase history, and survey data.

15. The method of claim 1, further comprising eliciting personal information from the user, wherein the recommendation is a function of both the at least one selected product and the personal information.

16. The method of claim 15, wherein the personal information includes at least one of age, skin type, skin texture, skin tone, wrinkles, hair color, hair style, hair condition, eye color, allergies, facial features, demographics, user preferences, and purchase history.

17. The method of claim 1, further comprising providing the user with an ability to select a basis for a recommendation, the basis being at least one of consumer survey data, consumer buying preferences, and expert advice.

18. The method of claim 2, further comprising: causing an additional facial image to be displayed to the user; and causing a second recommended product to appear on the additional facial image.

19. The method of claim 18, wherein multiple facial images are displayed simultaneously.

20. The method of claim 19, wherein each facial image has a differing combination of beauty products simulated thereon.

21. The method of claim 1, wherein the method is conducted, at least in part, in a network environment, wherein accessing the facial image and receiving the user selection occur via a network and in at least one location remote from a location of the user.

22. A method of simulating beauty product application, the method comprising:

displaying for a user a facial image on a display;

receiving from the user a selection of at least one beauty product;

identifying a recommended beauty product complementary to the at least one selected product;

notifying the user of the complementary beauty product;

providing the user with an option to trigger a simulation of a beauty product application of at least one of the selected beauty product and the complementary beauty product; and

simulating the beauty product application on the facial image in response to the user's trigger.

23. The method of claim 22, wherein identifying a complementary product is performed using an artificial intelligence engine.

24. The method of claim 23, wherein the artificial intelligence engine is based on at least one of a neural network, constraint program, fuzzy logic, classification, conventional artificial intelligence, symbolic manipulation, fuzzy set theory, evolutionary computation, cybernetics, data mining, approximate reasoning, derivative-free optimization, and soft computing.

25. The method of claim 22, wherein providing the user with an option to trigger a simulation includes providing the user with an option to trigger a simulation of both the selected beauty product and the complementary beauty product.

26. The method of claim 25, wherein the simulation of the selected beauty product and the complementary beauty product occurs simultaneously on the facial image.

27. The method of claim 25, wherein the simulation of the selected beauty product and the complementary beauty product occurs sequentially.

28. The method of claim 22, further comprising providing the user with an option to change a color of the selected beauty product.

29. The method of claim 22, further comprising providing the user with an option to change a color of the complementary beauty product.

30. The method of claim 29, wherein the option to change the color is based on at least one of a color bar, color palette, progressive color adjuster, and textual entry.

31. The method of claim 22, wherein the facial image includes at least one of a photograph, simulation, and graphical representation.

32. The method of claim 22, wherein the method is conducted, at least in part, in a network environment, wherein receiving the user selection occurs via a network and in at least one location remote from a location of the user, and wherein notifying the user occurs via the network.

33. The method of claim 22, further comprising receiving a request from the user for an alternative complementary product recommendation.

34. The method of claim 33, further comprising providing the user with an option to trigger a simulation of the alternative complementary product.

35. The method of claim 33, further comprising providing the user with an option to change a color of at least one of the selected beauty product, the recommended complementary beauty product, and the alternative complementary product.

36. A beauty product selection system, comprising:
a display for displaying a facial image;
means for receiving a selection by a user of at least one beauty product for simulated application to the facial image;
an identifier that recommends a beauty product based on the at least one selected product; and
a simulator that causes on the facial image a visual simulation of the at least one selected beauty product and the at least one recommended beauty product.

37. The system of claim 36, wherein the simulator causes the visual simulation of the recommended beauty product on the facial image while the simulation of the at least one selected product appears on the facial image.

38. The system claim 36, wherein the display includes software that facilitates the display of the facial image.

39. The system of claim 36, wherein the facial image is an image of the user's face.

40. The system of claim 36, further including a processor for causing an initial facial image of the user to be processed in a manner to thereafter permit simulated application of a beauty product on a selected portion of the facial image.

41. The system of claim 36, further including an interface providing the user with an option to affirmatively seek a recommendation, and wherein the simulation of the recommended product appears on the facial image after the user affirmatively seeks the recommendation.

42. The system of claim 41, wherein the interface provides the user with an option to specify at least one of brand, price, store, and product characteristic.

43. The system of claim 41, wherein the interface further includes a button activatable to cause a recommendation to be displayed.

44. The system of claim 36, wherein the simulator causes alternative simulated recommendations to sequentially appear on the facial image.

45. The system of claim 44, wherein the simulator causes a first alternative simulated recommendation to be displayed simultaneously on the facial image with a display of the at least one selected product, and wherein thereafter the simulator causes a second alternative simulated recommendation is displayed simultaneously on the facial image with a display of the at least one selected product.

46. The system of claim 44, wherein the simulator further includes a toggle that alternates between displays of the first and second simulated recommendations.

47. The system of claim 36, further comprising a data structure identifying complementary products and wherein the identifier is configured to access the data structure to recommend a beauty product.

48. The system of claim 47, wherein the data structure is populated with information derived from at least one of advice of beauty experts, user preference data, user purchase history, and survey data.

49. The system of claim 36, further comprising an interface for eliciting personal information from the user, and where the recommendation is a function of both the at least one selected product and the personal information.

50. The system of claim 49, wherein the personal information includes at least one of age, skin type, skin texture, skin tone, wrinkles, hair color, hair style, hair condition, eye color, allergy, facial features, demographics, user preferences, and purchase history.

51. The system of claim 36, further comprising a selector for providing the user with an ability to select a source of a recommendation, the source being at least one of consumer survey data, consumer buying preferences, and expert advice.

52. The system of claim 36, wherein the display presents two facial images, and wherein differing recommended products are displayed on each image.

53. The system of claim 52, wherein multiple facial images are simultaneously displayed.

54. The system of claim 53, wherein the simulator visually simulates a differing combination of beauty products on each facial image.

55. A system for simulating beauty product application, the system comprising:

- an image generator for causing display of a facial image;
- means for receiving from a user a selection of at least one beauty product;
- an identifier for identifying a recommended beauty product complementary to the at least one selected product;
- a notifier for notifying the user of the complementary beauty product;
- an interface providing the user with the option to trigger a simulated application on the facial image of at least one of the selected beauty product and the complementary beauty product; and
- a simulator for causing beauty product application to be simulated on the facial image in response to the user's trigger.

56. The system of claim 55, wherein the identifier is an artificial intelligence engine.

57. The system of claim 56, wherein the artificial intelligence engine is based on at least one of a neural network, constraint program, fuzzy logic, classification, conventional artificial intelligence, symbolic manipulation, fuzzy set theory, evolutionary computation, cybernetics, data mining, approximate reasoning, derivative-free optimization, and soft computing.

58. The system of claim 55, wherein the interface provides the user with an option to trigger a simulation of both the selected beauty product and the complementary beauty product.

59. The system of claim 58, wherein the simulator simulates the selected beauty product and the complementary beauty product simultaneously on the facial image.

60. The system of claim 58, wherein the simulator performs at least one of simulating the selected beauty product and the complementary beauty product on differing facial images and sequentially simulating the selected beauty product and the complementary beauty product.

61. The system of claim 55, further comprising an interface for providing the user with an option to change a color of the selected beauty product at least one of before the visual simulation and after the visual simulation.

62. The system of claim 55, further comprising an interface for providing the user with an option to change a color of the complementary beauty product.

63. The system of claim 62, wherein the interface is at least one of a color bar, color palette, progressive color adjuster, and textual processor.

64. The system of claim 55, wherein the facial image is at least one of a photograph, simulation, digital image, and graphical representation.

65. The system of claim 55, wherein the interface is further configured to provide the user with an option to request an alternative complementary product recommendation.

66. The system of claim 65, wherein the interface provides the user with an option to change at least one color of the selected beauty product, the complementary beauty product, and the alternative complementary product.

67. The system of claim 65, further comprising a storage location for storing the facial image.

68. A beauty product selection method, comprising:
receiving personal information from a user;
receiving from a user a selection of at least one beauty product;
simulating the at least one selected beauty product on a facial image;
determining a recommended beauty product based on the at least one selected product and the personal information; and
simulating the at least one recommended beauty product on the facial image.

69. The method of claim 68, wherein the personal information includes an image of the user on which the simulating occurs.

70. The method of claim 69, further comprising processing the image of the user to determine facial characteristics, and wherein determining takes into account the facial characteristics.

71. The method of claim 68, wherein the method is conducted, at least in part, in a network environment, wherein receiving the personal information, and receiving the user selection occur via a network and in at least one location remote from a location of the user.

72. A beauty product selection method, comprising:
accessing a facial image;
receiving subject-specific information;
using the subject-specific information to identify at least one beauty product for simulated application to the facial image;
simulating the at least one identified beauty product on the facial image;
determining a recommended beauty product based at least in part on the at least one identified product; and
simulating the at least one recommended beauty product on the facial image.

IX. Evidence Appendix

None

X. **Related Proceedings Appendix**

None